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FROM: DUE: 07/06/06 EDO CONTROL: G20060592  
DOC DT: 06/15/06  
FINAL REPLY:

Lisa Jackson, Commissioner  
Dept. of Environmental Protection  
State of New Jersey

TO:

Chairman Diaz

FOR SIGNATURE OF : \*\* PRI \*\* CRC NO: 06-0312

Chairman Diaz

DESC:

ROUTING:

Termination of the Heritage Minerals Site License

Reyes  
Virgilio  
Kane  
Silber  
Dean  
NMSS  
STP  
OE  
OGC

DATE: 06/26/06

ASSIGNED TO: CONTACT:  
RI Collins, RI

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with OGC





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JON S. CORZINE  
Governor

LISA P. JACKSON  
Commissioner

June 15, 2006

Commissioners  
US Nuclear Regulatory Commission  
Washington D.C. 20555-0001

Dear Commissioner:

I am writing today to inform you of our opinion on an issue that is currently before you, SECY-06-0117, the staff position on the termination of the Heritage Minerals site license. We believe that, based on review of our historical records, the description of the operating history in the Commission paper may not be completely accurate.

The draft Environmental Assessment implies that monazite was not produced at this site until 1989. However, the US Nuclear Regulatory Commission (NRC) Inspection report dated February 24, 1989, indicates that monazite was separated in the dry mill following magnetic separation and collected in a hopper where it was then combined with the wet mill tailings since 1986. Perkins and Cole, attorneys retained by Heritage Minerals, in their September 27, 1990 letter to the NRC, stated that "...monazite waste at source material concentrations was re-combined with other materials and placed in the area marked in blue on the site map [the combined tailings pile]..." As documented in the NRC Inspection Report Number 99990001/89-001, the current process (1989) used "new feed" which were the dry mill tailings from ASARCO. The inspection report states that this was *the same process that had been in operation since 1986*. Samples taken by the NRC inspector showed the monazite fraction, before it was combined with the wet mill tailings, had a source material concentration of 0.585%.

I just want to make sure that the Commission is aware that Heritage had been producing monazite since 1986 and combining it with wet mill tailings, which were then placed in the combined tailings pile. This means that source material that should have been licensed by the NRC was contaminating material that was below licensable source material concentrations.

This is inconsistent with the NRC's justification for claiming jurisdiction over the ferrovanadium slag on Shieldalloy Metallurgical Corporation's (SMC) Newfield site. Regarding the SMC site, the NRC states, in a January 15, 1992 letter to Dr. Robert Stern of the Department of Environmental Protection, that "The NRC jurisdiction is exercised for the protection of the workers on site even though some of the radiation exposure so regulated involves radiation from unlicensed material or devices. Thus, the ferrovanadium slag [which itself did not contain licensable source material] on SMC's Newfield site comes under NRC jurisdiction to the extent that the slag represents a source of radiation exposure to be considered in the protection of the

workers while the slag is on the site." The letter goes on to state that "The NRC's authority at a licensed site ... also extends to facilities, material and equipment *contaminated with the licensed material* [emphasis added], and that authority is exercised to the extent necessary for adequate protection of the workers, the public and the environment." So at the Heritage site, even though licensable quantities of source material (which were determined to need a license by the NRC and for which Heritage Minerals received a Notice of Violation) contaminated large areas of the Heritage site, in this case the NRC claims no responsibility. The NRC deems these materials outside of NRC's jurisdiction because they are not themselves above source material concentration. This contradicts the NRC statement that authority is exercised to the extent necessary for adequate protection of the workers, *the public, and the environment*.

The Department maintains that the NRC jurisdiction should extend not only to the area where licensable pockets of material were found, but to the combined tailings pile as well. Since this was not adequately addressed in the EA, we believe that it is not addressed in the Commission paper.

We believe that the Region staff has adequately presented our position as to whether the site should be released for unrestricted use. The State of New Jersey does not concur with that decision. While we may have regulatory authority over material below licensable source material concentrations, it is doubtful that Heritage will agree to clean up an area that has been released by the NRC for unrestricted use. In this case, the state would be preempted by the NRC for the licensed areas of the site, even though some of the remaining residual material exceeds state licensing criteria.

I hope the Commission considers our position before making any decisions regarding the release of the Heritage property.

Sincerely yours,



Lisa P. Jackson  
Commissioner

- c: Commissioner Nils J. Diaz, USNRC
- Commissioner Edward McGaffigan, Jr.
- Commissioner Jeffrey S. Merrifield
- Commissioner Gergory B. Jaczko
- Commissioner Peter B. Lyons